

REMARKS

Claim 20 has been amended to better define the present invention. Bases for the amendments can be found on Page 5, lines 17-20; Page 10, lines 17-18; and Page 12, line 36 to Page 13, line 1, and Page 14, line 35. No new matter is added. Entry is believed to be proper and respectfully requested.

Rejections under 35 USC §103(a) over Roe et al. in view of Wenninger et al.

The Examiner rejected claims 21-25 under 35 U.S.C. §103(a) over U.S. Patent No. 5,609,587, issued to Roe et al. (hereinafter "Roe"), in view of *International Cosmetic Ingredient Dictionary and Handbook* by Wenninger et al. (hereinafter "Wenninger"). The Examiner stated that Roe discloses that petroleum-based emollients can be used in the composition. Further, the Examiner referred to the previous Office Action for the remaining rejection. In the previous Office Action, claim 20 was rejected over Roe/Wenninger. The Examiner suggested that Roe discloses a diaper having a lotioned topsheet, wherein the lotion composition contains ingredients similar to those of the presently claimed composition, and that disposable absorbent article can be a sanitary napkin, a pantiliner, a diaper, an incontinence brief, etc. The Examiner acknowledged that Roe does not teach the specific film-forming agents as claimed. However, the Examiner stated that Wenninger discloses acrylate copolymers (Vol. 1, pp. 26-27) and polyethylene (Vol. 2, pp. 1067-1068) as film formers and that these materials can be used in appropriate amounts in the lotion composition disclosed by Roe. The Examiner concluded that it would be obvious to combine these references.

Applicants respectfully traverse.

The presently claimed invention is directed to a composition comprising a skin conditioning agent, a viscosity enhancing agent, a film-forming agent, and optionally, a skin care ingredient. These components are combined to provide the composition with a solid or semi-solid consistency at room temperature so that migration on the substrate surface and the adverse effects to the absorbency of the article are minimized (Page 4, lines 6-10) and, upon transfer to skin, the composition forms a rub-off and wash-off resistant coating. (Page 1, lines 8-11).

Applicants point out that Roe merely discloses that film-forming agents can be one of several optional ingredients used in a composition (Col. 23, lines 27-44) and Wenninger is a handbook that includes several thousand chemical compounds useful for various applications. Numerous combinations can be chosen from the optional ingredients and chemical compounds of Roe/Wenninger. Applicants respectfully submit that without a known goal gleaned from the references, the Examiner has relied on Applicants' disclosure to pick and choose among various chemicals taught by the references. Such hindsight reconstruction of a claimed invention is improper.

In re Fritch, 972 F.2d 1260, 1266 (Fed. Cir. 1992).

Further, The Court has held that references relied on to support a rejection under 35 U.S.C. §103 must provide an enabling disclosure. *In re Payne*, 203 USPQ 245 (CCPA 1979). Since the possibilities for the components and their respective concentrations are numerous, the combined teaching of Roe/Wenninger is, at best, an invitation to explore technologies using various chemicals. It does not arise to an enabling disclosure of such specificity as to place the invention in the possession of the public.

Based on the foregoing, Applicants submit that absent extensive research towards a known goal, the claimed invention would not have been obvious to one of ordinary skill in the art. Therefore, the obviousness rejection based on Roe/Wenninger cannot be sustained.

With respect to the dependent claims 21-25, Applicants respectfully submit that, as discussed above, since the broader claims are nonobvious in view of the references, the dependent claims, which include all the limitations of the independent claim, are similarly nonobvious in view of the references. Further, the Examiner's reliance on a reference that allegedly teaches a specific limitation (petroleum-based emollient) of a dependent claim (claim 22) does not render that specific dependent claim obvious.

Based on the foregoing, Applicants respectfully submit that the Examiner has failed to establish a *prima facie case* of obviousness. Reconsideration and withdrawal of this rejection are respectfully requested.

CONCLUSION

The above represents a complete response to the rejection under 35 U.S.C. §103. Applicants believe that this response places Claims 20-25 in condition for allowance. Reconsideration, withdrawal of rejection and a notice of allowance are respectfully requested.

January 30, 2003
Customer No. 27752

Respectfully submitted,
For: Klofta et al.

Caroline Wei-Berk
Caroline Wei-Berk
Attorney for Applicants
Reg. No. 45,203
(513) 626-1139

BEST AVAILABLE COPY

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims:

Please amend Claim 20 as follows:

20. (Amended) A disposable absorbent article having a film-forming composition disposed on at least a skin-contacting surface of the absorbent article, wherein the composition is substantially anhydrous and is solid or semi-solid at room temperature, the composition comprises:
- a. from about 1 to about 80 wt% of a skin conditioning agent selected from the group consisting of petroleum-based emollients; fatty acid esters; polysiloxanes; polyol polyesters; esters or ethers of polyhydroxy alcohols; fatty alcohol esters of polyprotionic acids; animal oils, fats, and their derivatives; vegetable oils, hydrogenated vegetable oils, and their derivatives; branched hydrocarbons; fatty alcohol ethers; free sterols, sterol esters and their derivatives; sphingolipids; phospholipids; and mixtures thereof;
 - b. from about 15 to about 50 wt% of a viscosity enhancing agent selected from the group consisting of C12-C60 alcohols, waxes, fumed silicas, and mixtures thereof;
 - c. from about 1 to about 20 wt% of a film-forming agent selected from of polyalkenes, PVP/alpha-olefin copolymers, acrylic copolymers, and mixtures thereof; and
 - d. optionally, from about 0.01 to about 10 wt% of a skin care ingredient selected from the group consisting of Monographed I actives, Monographed III actives, vitamins, proton donating agents, protease inhibitors, enzyme inhibitors, chelating agents, anti-microbials, skin soothing agents, and mixtures thereof.

BEST AVAILABLE COPY